

## Wendy Eber

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**From:** Wendy Eber  
**Sent:** Wednesday, June 13, 2012 4:07 PM  
**To:** rhawks@cnbank.com  
**Cc:** ewgumaer@gmail.com; Lester Eber  
**Subject:** Follow up From Trustees Meeting of the Trust of Allen Eber June 7th, 2012  
**Attachments:** Judicial Decision.pdf; Time-Stamped Summons Complaint - Alexbay LLC v Eber Bros et al - 022112.pdf; Unanimous Written Consent June, 2012.pdf

Dear Rick,

As discussed at the Trustees Meeting last week on Thursday June 7<sup>th</sup>, attached are copies of the complaint, judicial decision and consent of the board for the recent judicial action regarding Eber Bros. Metro Inc. I am working on the rest of the information you have requested and will follow up with you shortly. Should you need any other documents please let me know.

Thank you,  
Wendy

**UNANIMOUS WRITTEN CONSENT  
OF  
BOARD OF DIRECTORS  
OF  
EBER BROS. WINE AND LIQUOR CORP.**

The undersigned, being all of the Directors of Eber Bros. Wine And Liquor Corp., a New York corporation (the "Corporation"), hereby consent, pursuant to Section 708(b) of the Business Corporation Law of the State of New York, to the adoption of the following resolutions:

**WHEREAS**, The Corporation is in default of the payment of certain obligations due to Alexbay, LLC; and

**WHEREAS**, the outstanding balance due Alexbay, LLC as of the date hereof is in excess of \$3,650,000 ("Obligations"); and

**WHEREAS**, the Corporation's Obligations are secured by a security interest in all of its assets, including all of its ownership interest in Eber Bros. Wine and Liquor Metro, Inc. ("Metro"); and

**WHEREAS**, Alexbay, LLC has notified the Corporation that it is going to proceed with its rights as the holder of a security interest in the Collateral and is willing to accept all of the ownership of Metro in full satisfaction of the Obligations (the "Proposed Transfer"); and

**WHEREAS**, the undersigned have met and/or had numerous conversations regarding the Proposed Transfer and fully discussed the Proposed Transfer (including but not limited to discussions on March 13, 2012, throughout the week of March 13, 2012, May 30, 2012 and June 1, 2012); and

**WHEREAS**, after consideration of the financial statements and records of the Corporation and other information deemed relevant by the Board of Directors, the Board of Directors has determined in good faith that the value of Metro is less than the Obligations owed to Alexbay, LLC; and

**WHEREAS**, the New York State Supreme Court has determined and ruled in Alexbay, LLC vs. Eber Bros. Wine and Liquor Corp., et al. (Sup Ct., Monroe County, Index No. 2012-1919) (May 24, 2012) that the taking by Alexbay, LLC of the ownership of Eber Bros. Wine & Liquor Metro, Inc. in full satisfaction of the debt due Alexbay, LLC, by the Corporation is "Commercially Reasonable" under New York's Uniform Commercial Code;

**NOW, THEREFORE, BE IT**

**RESOLVED**, that the Corporation be, and hereby is, authorized and directed to transfer and deliver to Alexbay all of its ownership interest in Metro in full satisfaction of the Corporation's Obligations to Alexbay, LLC; and be it further

**RESOLVED**, that the Corporation enter into and execute the "Agreement for Turnover and Acceptance of Eber Bros. Wine and Liquor Metro, Inc., Pursuant to New York Uniform Commercial Code" in the form attached hereto, and; be it further

**RESOLVED**, that any and all actions heretofore taken by the officers of the Corporation acting for and on behalf of the Corporation in connection with the Proposed Transfer, the negotiation of the Agreement described above and the other transactions contemplated by the foregoing resolutions are hereby ratified, approved and confirmed in their entirety; and be it further

**RESOLVED**, that the appropriate officers of the Corporation are hereby authorized, empowered and directed to take all such further action and to execute, deliver, certify and file all instruments and documents in the name of and on behalf of this Corporation as the officers executing the same shall approve as necessary or advisable to effectuate and accomplish the purpose of the foregoing resolutions and the transactions contemplated thereby.

IN WITNESS WHEREOF, the undersigned have executed this Written Consent this 16 day of June, 2012.

  
\_\_\_\_\_  
Wendy Eber, Director

\_\_\_\_\_  
Elliott Gumaer, Director

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF MONROE

ALEXBAY, LLC,

Plaintiff,

SUMMONS

-vs.-

Index No.:

2012-1919

EBER BROS. WINE & LIQUOR CORP.;

SOUTHERN WINE & SPIRITS  
OF AMERICA, INC.;

EBER BROS. WINE & LIQUOR METRO, INC.;

and

JOHN DOES 1 – 10, being fictitious names  
intended to designate other entities or persons  
claiming any interest in Eber Bros. Wine &  
Liquor, Inc.'s "OWNERSHIP INTEREST IN  
EBER BROS. WINE & LIQUOR METRO,  
INC.";

Defendants.

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MONROE COUNTY CLERK

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To the above-named Defendants:

**YOU ARE HEREBY SUMMONED** to answer the Complaint in this action and to serve a copy of your Answer on the Plaintiff's attorneys within twenty (20) days after service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Trial is to be held in the County of Monroe; the venue of this matter is based upon Defendants' principal place of business.

DATED: 21 February 2012  
Rochester, New York.

**UNDERBERG & KESSLER LLP**  
*Attorneys for Plaintiff Alexbay, LLC*



William E. Brueckner and Michael J. Beyma  
300 Bausch & Lomb Place  
Rochester, New York 14604  
585.258.2800



STEVEN G. CARLING  
(585) 258-2804  
scarling@underbergkessler.com

May 24, 2012

Marino Fernandez, Jr., Esq.  
1 East Main Street, 10<sup>th</sup> Floor  
Rochester, New York 14614

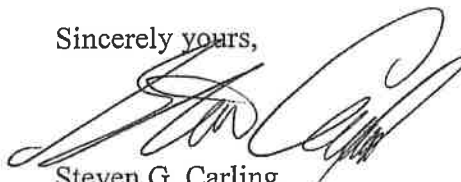
Thomas R. Smith, Esq.  
Bond Schoeneck King, PLLC  
One Lincoln Center  
110 West Fayette Street  
Syracuse, New York 13202-1355

**Re: Alexbay, LLC v. Eber Bros. Wine & Liquor Corp.  
Index No. 12/1919**

Dear Messrs. Fernandez and Smith:

With regard to the above-captioned matter, enclosed and served upon you is a copy of a Notice of Entry of Order with Order. Thank you.

Sincerely yours,



Steven G. Carling

SGC/ddd  
Enclosure



May 24, 2012  
Page 2 of 2

bcc: Lester Eber  
Wendy Eber

**STATE OF NEW YORK  
SUPREME COURT**

**COUNTY OF MONROE**

ALEXBAY, LLC,

Plaintiff,

-vs.-

**NOTICE OF ENTRY**

Index No.: 2012-1919

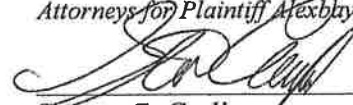
EBER BROS. WINE & LIQUOR CORP.;  
SOUTHERN WINE & SPIRITS OF AMERICA, INC.;  
EBER BROS. WINE & LIQUOR METRO, INC.; and  
JOHN DOES 1 – 10, being fictitious names intended to  
designate other entities or persons claiming any interest  
in Eber Bros. Wine & Liquor, Inc.'s "OWNERSHIP  
INTEREST IN EBER BROS. WINE & LIQUOR  
METRO, INC.";

Defendants.

**PLEASE TAKE NOTICE** that the annexed Order is a true and complete copy and was duly  
entered in the office of the Clerk of the County of Monroe on the 23<sup>rd</sup> day of May, 2012.

**DATED: May 24, 2012**  
**Rochester, New York**

**UNDERBERG & KESSLER LLP**  
*Attorneys for Plaintiff Alexbay LLC*

  
Steven G. Carling  
300 Bausch & Lomb Place  
Rochester, New York 14604  
585.258.2800

TO: Thomas R. Smith  
**BOND SCHOENECK KING, PLLC**  
*Attorneys for Defendant Southern Wine & Spirits of America, Inc.*  
One Lincoln Center, 110 W. Fayette St.  
Syracuse, New York 13202-1355

**MARINO A. FERNANDEZ, JR., ESQ.**  
*Attorney for the Eber Bros. Defendants*  
1 East Main Street, 10<sup>th</sup> Floor  
Rochester, New York 14614  
585.360.1266

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MONROE COUNTY CLERK

At a Term of this Court held in and for the County of Monroe at the Monroe County Supreme Court, Commercial Part, 545 Hall of Justice, Rochester, NY 14614 on the 10<sup>th</sup> day of May, 2012.

PRESENT: HON. MATTHEW A. ROSENBAUM, J.S.C.  
Supreme Court Justice Presiding

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF MONROE

ALEXBAY, LLC,

ORDER

Plaintiff,

Index No.: 2012-1919

-vs.-

EBER BROS. WINE & LIQUOR CORP.;  
SOUTHERN WINE & SPIRITS OF AMERICA, INC.;  
EBER BROS. WINE & LIQUOR METRO, INC.; and  
JOHN DOES 1 – 10, being fictitious names intended to  
designate other entities or persons claiming any  
interest in Eber Bros. Wine & Liquor, Inc.'s  
"OWNERSHIP INTEREST IN EBER BROS. WINE &  
LIQUOR METRO, INC.";

Defendants.

Plaintiff, Alexbay, LLC, having brought a Motion seeking an Order determining that Plaintiff's proposed acceptance of certain collateral, in full satisfaction of an obligation owed to Plaintiff, is "commercially reasonable" as the term is defined in the Uniform Commercial Code; and awarding such other and further relief as the Court deems just, equitable and proper,




NOW UPON reading the Notice of Motion dated March 15, 2012, on behalf of Plaintiff in support of the Motion, together with the Affidavit of Lester Eber, sworn to the 14<sup>th</sup> day of March, 2012, together with exhibits thereto, in support of Plaintiff's Motion, and having no opposition thereto, it is hereby

ORDERED, that part of Plaintiff's Motion seeking a determination that Alexbay's acceptance of certain collateral in full satisfaction of Eber Bros' obligation is "Commercially Reasonable" under the Uniform Commercial Code is GRANTED, and it is further

ORDERED, that part of Plaintiff's Motion seeking dismissal of Defendant Southern Wine & Spirits of America, Inc. from this action is GRANTED.

Dated: May 11, 2012

  
HON. MATTHEW A. ROSENBAUM  
Supreme Court Justice

ENTERED: 5/23/12